Supreme Court, U.S.
FILED
SEP 10 1999
OFFICE OF THE CLERK

(2)

No. 99-182

IN THE

Supreme Court of the United States

Rosemarie Pink

v.

Modoc Indian Health Project,
Indian Health Service,
Erin Forrest, as an individual

On Petition For Writ Of Certiorari
To The Untied States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Rosemarie Southcott Pink
P.O. Box 561
Denver, CO 80201
(303) 237-3071

6 pp

BASIS FOR JURISDICTION

Respondents assert that petitioner has not provided any case or congressional citations to support her statement of jurisdiction. The citations were included in the discussion under (h), in the Petition for Certiorari. Included in the Basis For Jurisdiction statement were the Supreme Court rules under which jurisdiction was claimed. The inconsistency in the 9th circuit decision, lies in the fact that the 9th circuit decision and the manner in which the cited cases were discussed by the 9th circuit and the respondents, did not take into account the Constitution and Bylaws of each Rancheria, which expressly limits their jurisdiction to the confines of their respective Rancherias, The consequences of the lower court decision which disregards the creation documents of a Tribe in making a decision, is of such far reaching importance as to require review by this court. The recent Supreme Court Decisions in Alaska v Native Village of Venetie Tribal Government No. 96-1577 , Amoco Production Company v Southern Ute Indian Tribe No. 98-830 and Minnesota v Mille Lacs Band of Chippewa No. 119 S. Ct 1187 1203 were made after consideration of the legal actions and documents which governed the creation of the tribes as political entities recognized by the United States. In this case, for which certiorari is sought, the lower courts effectively conferred the status of Indian Tribe upon a corporation, which is not a tribal corporation, in violation of the governing documents of the member Tribes. Nor do those documents give individual tribal leaders, and certainly not program directors, authority to amend the constitutions in order to conduct business as they see fit. As specified in the Indian Reorganization Act and the Tribal Constitutions, amendments can only be made through secretarial election. The subject creation documents of the tribes, duly adopted and approved by each Tribe and the appropriate government official, as required by the Indian Reorganization Act, dictate the Tribe's political relationship with other entities, including the state and federal government. The effect of the lower court's

decision in this case is that Modoc Indian Health could conceivably retain the authority of a tribe, even if the member tribes were to withdraw their support from Modoc. After all, if the authority of the tribe has been disregarded at its most basic level, what would prevent Modoc Indian Health or similar organizations from disregarding the Tribe's authority in other matters? In fact, this has already been done by Modoc Indian Health, by refusing to seat the duly elected health board members in favor of a member of Director Erin Forrest's choosing. The Indian Health Service has not altered its business with Modoc Indian Health in any way as a result of this action by Modoc. It is apparent that IHS is recognizing the authority of Modoc over the authority of a member tribe.

The decisions made by the courts in the cases cited by the petitioner, were decided with the creation and governing documents of the subject Tribe or Tribes being the primary deciding factor in the court's decision. The respondents would prefer the court to ignore the founding documents of the tribes by attempting to define the issues as general tribal sovereign immunity and on/off reservation issues, in opposition to decisions of this court. In the opinion of this court in the Minnesota v Mille Lacs the court states:

"The... argument that similar language in two treaties involving different parties has precisely the same meaning reveals a fundamental misunderstanding of thebasic principles of treaty construction. The review ofhistory and negotiations of the agreement is central to the interpretation of treaties."

Based on the above, Modoc's contention that certiorari is unnecessary, is in error.

MISSTATEMENTS OF FACT OR LAW CONTAINED IN RESPONDENTS BRIEF.

Respondents brief contains several misrepresentations of fact that could affect the way case law and federal law is applied to this case.

Respondent claims that The Department of Fair Employment and Housing (DFEH) did not recommend that Petitioner file a complaint against Forrest and the Modoc Indian Health Project. Petitioner did not make that statement. The DFEH, through Director Fransico Godina, told the Petitioner and a co-worker, who had filed similar complaints with the DFEH against Modoc and Forrest, that the DFEH legal department had recommended that the DFEH file complaints against Forrest and MIHP. A week later, the DFEH told the petitioner and the co-worker that MIHP had challenged the State's jurisdiction and the legal department thought that maybe they didn't have jurisdiction. The DFEH closed the case, due to lack of jurisdiction, but did not make a determination that the matter was an internal Tribal affair.

Respondent states that "Modoc is, and at all times relevant to this litigation was, a 'Tribal Organization' within the meaning of the ISDA and other federal statutes. " If the tribal constitutions of the Alturas and Cedarville Rancherias expressly prohibit the formation of reservation corporations that would have an authority and status equal to the tribes themselves, then Modoc cannot be a "Tribal Corporation", within the meaning of the ISDA.

Respondent States that their Service area is "all of Modoc County, except the Ft. Bidwell Indian Reservation." That fact has no bearing on this case because the bounderies of a service area is simply the geographical area which is served by the Modoc Indian Health Project and is unrelated to the jurisdicitonal boundaries of each Tribe.

Respondent states that "Modoc Board members are selected and supervised in accordance with the political and cultural system establishing the Rancheria tribal government". This statement is in error. The basic governing document of each Rancheria is the duly approved and adopted constitution and by-laws. The manner of selection of representatives to various committees and boards is specifically outlined in the tribal constitution. Modoc Indian Health has not adhered

to the terms of the tribal constitution regarding Cedarville's representative to the MIHP Board of directors. In fact Modoc refused to seat the duly elected tribal representative from the Cedarville Rancheria. Therefore Modoc is not acting as though it is controlled and managed by it's member tribes and is in violation of it's own charter.

Respondent alludes to the fact that Erin Forrest, the Project Director, is a member of the Cedarville Rancheria. In fact, Mr. Forrest is not now, has never been and is not eligible to be a member of the Cedarville Rancheria. The Hewise Band is part of the Pit River Tribe, whose tribal offices are located in Burney, CA. Even if the Hewise Band were to give up their membership in the Pit River Tribe, or if Mr. Forrest were to relinquish his membership in the band, he would under no circumstances be eligible for membership in the Cedarville Rancheria.

Respondent states that Petitioner failed to exhaust tribal remedies. In fact there are no tribal remedies or system for adjudicating complaints against Modoc Indian Health Project. No tribal Court exists and there is no provision in the constitutions, by-laws or ordinances of either the Cedarville or Alturas Rancherias which provides for the adjudication of complaints regarding any aspect of the operations of the Modoc Indian Health Project or similar organizations. This is further evidence that the Tribes do not consider Modoc Indian Health to be an "arm" of either Rancheria,, which is in accordance with their respective constitutions. The petitioner followed the personnel policies and procedures of the Modoc Indian Health Project in seeking assistance in resolving her concerns about the behavior of the Project Director. The policies state that a complaint **may** be submitted to the Project Director after first attempting to resolve the problem with the immediate supervisor, informally. Since the immediate supervisor and the Project Director was the same person, petitioner filed a grievance with the MIHP Board after an informal attempt to resolve the complaint

resulted in more harassment. The board did not respond to petitioner's initial complaint, nor to the second grievance filed due to wrongful termination. There is no further appeal process delineated in the personnel policies and procedures. In fact, the personnel polices state that "The applicant or employee retains the right to file a complaint with any State or Federal agency exercising authority in matters of discrimination (e.g. Equal Opportunity Commission) and with Federal agencies funding Project activities."

Respondent's statement that "Modoc serves only the Native American population of Modoc County, is not accurate. Modoc financially supports various programs that provide services to the general population. Programs supported by Modoc include the Modoc Performing Arts Council, the annual Modoc Health Fair, and the Modoc County dental clinic, which serves the general population.

CONCLUSION

The decision of the Ninth Circuit Court of Appeals, by it's failure to consider the creation and governing documents of the subject Tribes, is in opposition to decisions made by this court. I respectfully request that the Court grant Certiorari in this matter.

Respectfully submitted

/s/

Rosemarie Southcott (Pink)
P.O. Box 561
Denver, CO 80215
(303) 237-3071